

Montana Water Court
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FILED
04/05/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
42A-0030-I-2023
Lambert, Kathryn
3.00

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION ROSEBUD CREEK - BASIN 42A
INTERLOCUTORY DECREE

CLAIMANT: Golder Ranch Inc.

CASE 42A-0030-I-2023
42A 30125817

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following remarks:

NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

The flow rate issue remark was not addressed and resolved during the objection process. The Legislature has directed the Water Court to resolve the issue remarks using the procedures set forth in section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark. In this instance, the information in the claim file is sufficient to address and resolve the issue remark. In order to discuss the flow rate issue and give the claimant an opportunity to file additional evidence if it so chose, an Order Consolidating Case And Setting Scheduling Conference was issued on February 3, 2023 setting a February 23, 2023 scheduling conference. The claimant did not appear at the scheduling conference. On February 27, 2023 the Court Minutes, Order Entering Default, and Order Setting Deadline For Claimant To Show Cause Why Claim Should Not Be Amended Pursuant to 85-2-248 (9)(a), MCA, was issued. The Order Setting Deadline states:

This claim is for stockwater from a developed spring. Rule 24(b)(1), W.R.C.E.R., states that the flow rate guideline for a stockwater right from a developed spring is 35.00 GPM. Therefore, it is

ORDERED that the deadline for Golder Ranch Inc. to show cause in writing why the Court should not proceed with amending the flow rate of claim 42A 30125817 to 35.00 GPM pursuant to section 85-2-248(9)(b), MCA, is **March 23, 2023**. If no additional information is filed by March 23, 2023, the Court will proceed with amending the claim as detailed above.

Nothing was filed.

APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree has no flow rate. The flow rate should be 35.00 GPM.

The flow rate issue remark should be removed as addressed and resolved.

2. The Preliminary Decree includes the following notice remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 42A DECREE ISSUED 05/23/2013.

The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information in the claim file is sufficient to resolve the flow rate issue remark without evidentiary hearing. Sections 85-2-248(3) and (9), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Golder Ranch Inc.
5224 Carefree Pl
Fort Collins, CO 80525

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
ROSEBUD CREEK
BASIN 42A**

Water Right Number: 42A 30125817 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: GOLDER RANCH INC
5224 CAREFREE PL
FORT COLLINS, CO 80525 9777

Priority Date: JANUARY 12, 1897

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 35.00 GPM

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

***Source Name:** SPRING, UNNAMED TRIBUTARY OF SLOUGH GRASS COULEE

Source Type: GROUNDWATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1	NENENE	25	1S	40E	ROSEBUD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

THE MEANS OF DIVERSION IS A DUG OUT SPRING.

Period of Use: JANUARY 1 TO DECEMBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		1	NENENE	25	1S	40E	ROSEBUD